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Attorneys for Defendants  
TRANSFIRST HOLDINGS, INC., TRANSFIRST, LLC and  
TRANSFIRST THIRD PARTY SALES, LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

(SAN FRANCISCO DIVISION)

JUST FILM, INC., RAINBOW BUSINESS  
SERVICES, D/B/A PRECISION TUNE AUTO  
CARE; VOLKER VON GLASENAPP; AND  
JERRY SU, on behalf of themselves, the general  
public and those similarly situated

Plaintiff,

vs.

MERCHANT SERVICES, INC.; UNIVERSAL  
CARD, INC.; NATIONAL PAYMENT PROCESS-  
ING; UNIVERSAL MERCHANT SERVICES  
CORPORATION; ATLAS PAYMENT PROCESS-  
ING; UNITED BANK CARD OF AMERICA, INC.;  
SPC, INC. d/b/a FIRST NATIONAL MERCHANTS  
SOLUTIONS; MBF LEASING LLC; MBF  
MERCHANT CAPITAL, LLC; NORTHERN  
FUNDING, LLC; NORTHERN LEASING  
SYSTEMS, INC.; CONGRESS FINANCIAL  
CORPORATION; GOLDEN EAGLE LEASING  
LLC; LEASE SOURCE, INC.; LEASE FINANCE  
GROUP, LLC; TRANSFIRST HOLDINGS, INC.;  
TRANSFIRST FINANCIAL INSTITUTIONS  
SERVICES; TRANSFIRST INDEPENDENT  
SALES SERVICES; FIRST NATIONAL BANK OF  
OMAHA; COLUMBUS BANK AND TRUST CO.;  
MERRICK BANK; THIRD FIFTH BANK; RBL  
CAPITAL GROUP, LLC; WILLIAM HEALY;  
ROBERT LATOUSEK; JAY COHEN; RICH  
HAHN; SARA KRIEGER; JASON MOORE; LINA  
KRAVIC; BRIAN FITZGERALD; SAM BUONO;  
PETER DEPALMA; FIONA WALSHE; AND ERIC  
MADURA AND DOES 1 THROUGH 75

Defendants.

CASE NO. **10 1993**

**DEFENDANTS TRANSFIRST HOLDINGS,  
INC., TRANSFIRST, LLC, TRANSFIRST  
THIRD PARTY SALES, LLC, AND  
NORTHERN LEASING SYSTEMS, INC.'S  
NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. §§ 1331, 1332,  
1441, 1446, 1453**

FILED 99  
2010 MAY - 14 4:14 PM  
RICHARD W. WOODS  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JL

1 TO THE CLERK OF THE ABOVE-TITLED COURT:

2 PLEASE TAKE NOTICE THAT defendants TransFirst Holdings, Inc., TransFirst, LLC,  
3 TransFirst Third Party Sales, LLC, and Northern Leasing Systems, Inc. (collectively, the "Removing  
4 Defendants"), by and through their attorneys, hereby remove to this Court the state court action  
5 described below, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1446, and 1453. In support thereof,  
6 Removing Defendants state as follows:

7 **I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED**

8 1. On or about March 26, 2010, Plaintiffs Just Film, Inc., Rainbow Business Services,  
9 D/B/A Precision Tune Auto Care, Volker Von Glasenapp, and Jerry Su (collectively "Plaintiffs")  
10 commenced this putative class action by filing a complaint ("Complaint" or "Comp.") under the  
11 caption of *Just Film, Inc., et al, v. Merchant Services, Inc., et al*, in the Superior Court for the State of  
12 California, City and County of San Francisco, Case No. CGC-10-498225 (the "State Court Action").  
13 True and correct copies of the Summons, Civil Case Cover Sheet, Complaint, Proof of Service of  
14 Summons and Complaint, and Notice to Plaintiff of the Case Management Conference served on the  
15 Removing Defendants are attached as Exhibit A to the Declaration of Maria Ellinikos in Support of  
16 Defendants' Notice of Removal of Action ("Ellinikos Dec.").

17 2. There have been no further proceedings in the State Court Action, and no other  
18 pleadings have been filed and served upon Plaintiff or the Removing Defendants in this action.  
19 Ellinikos Dec. ¶ 3.

20 3. Each of the Removing Defendants was served with or otherwise received a copy of the  
21 complaint and summons in the State Court Action on or after April 8, 2010. Therefore, this Notice of  
22 Removal is timely pursuant to 28 U.S.C. § 1446(b), in that it has been filed by Removing Defendants  
23 within thirty (30) days of the date of that receipt.

24 4. The United States District Court for the Northern District of California is the judicial  
25 district embracing the place where the State Court Action was filed by Plaintiffs and is therefore the  
26 appropriate court for removal pursuant to 28 U.S.C. § 1441(a).

27 5. By filing this Notice of Removal, Removing Defendants do not waive any defense to  
28 the claims asserted by Plaintiffs which may be available to them and do not concede that Plaintiffs

1 have pled any claims upon which relief can be granted. Removing Defendants dispute Plaintiffs'  
 2 individual and putative class action claims and contend only that the nature of Plaintiffs' putative class  
 3 claims as pled demonstrate that this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1332, and that  
 4 removal is proper under 28 U.S.C. §§ 1441 and 1453.

5 6. No previous application has been made for the relief requested herein.

6 7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon  
 7 Plaintiffs' counsel and a copy is being filed with the clerk for the Superior Court for the State of  
 8 California, City and County of San Francisco.

## 9 **II. REMOVAL IS PROPER UNDER 28 U.S.C § 1331**

10 8. This action is a civil action of which this court has original, federal question jurisdiction  
 11 under 28 U.S.C. § 1331, and is one which may be removed to this Court by Removing Defendants  
 12 pursuant to the provisions of 28 U.S.C. § 1441(b), in that it arises under 18 U.S.C. § 1962 *et seq.*  
 13 (RICO).

14 9. Under 28 U.S.C. § 1367(a) and 1441(c), this Court may exercise supplemental  
 15 jurisdiction over Plaintiffs' state law claims. Plaintiffs' federal and state law claims arise from the  
 16 same series of events. *See* Comp. ¶¶ 141-172 (alleging RICO claim based on acts underlying  
 17 remaining state law claims).

18 10. All defendants served with process as of this date consent in the removal of this action.  
 19 *See* Joinder in Defendants TransFirst Holdings, Inc., TransFirst, LLC, TransFirst Third Party Sales,  
 20 LLC, and Northern Leasing Systems, Inc.'s Notice of Removal filed by Merchant Services, Inc.,  
 21 Universal Card, Inc., National Payment Processing, Inc., Atlas Payment Processing, SPC, Inc. d/b/a/  
 22 First National Merchants Solutions, MBF Leasing, LLC, MBF Merchant Capital, LLC, Northern  
 23 Funding, LLC, Golden Eagle Leasing, LLC, Lease Finance Group, LLC, United Bank Card, Inc.,  
 24 Congress Financial Corporation, First National Bank of Omaha, Columbus Bank and Trust Company,  
 25 Merrick Bank, Fifth Third Bank, RBL Capital Group, LLC, William Healy, Jay Cohen, Rich Hahn,  
 26 Sara Krieger, Jason Moore, Lina Kravic, Sam Buono, Fiona Walshe and Eric Madura.

27 11. Removing Defendants exercised due diligence to ascertain whether all named  
 28 defendants were served with process in the State Court Action. *Ellinikos Dec.* ¶ 4.



12. Defendants Lease Source, Inc. and Brian Fitzgerald have not been served with process. See Declaration of Seema Tendolkar in Support of Defendants' Notice of Removal of Action ("Tendolkar Dec."), ¶¶ 2-3.

13. Removing Defendants exercised due diligence to locate defendants Robert Latousek and Peter DePalma by reaching out to the entities listed as the employers of these individuals in Complaint ¶¶ 22 and 30. Removing Defendants learned that neither of these defendants is affiliated with any of the defendants listed in Complaint ¶¶ 22 and 30, or any other defendant in this action. Tendolkar Dec. ¶ 4.

14. Removing Defendants learned that no proof of service in the State Court Action is on file for defendants Robert Latousek and Peter DePalma as of May 7, 2010. Ellinikos Dec. ¶ 5.

15. The entity Universal Merchant Services Corporation does not exist. *Id.* at ¶ 6; *see also* Compl. ¶ 4 (alleging that Merchant Services, Inc. operates under the name of Universal Merchant Services Corporation).

16. The entities TransFirst Financial Institution Services and TransFirst Independent Sales Services do not exist. Ellinikos Dec. ¶ 7; *see also* Compl. ¶ 14 (alleging that other TransFirst entities have operated under the names of TransFirst Financial Institutions Services and TransFirst Independent Sales Services).

17. There are no grounds that would justify this Court declining to exercise its jurisdiction pursuant to 28 U.S.C. § 1367(c).

### III. REMOVAL IS ALSO PROPER UNDER 28 U.S.C § 1332

18. The case is also properly removed to this Court because this Court has subject-matter jurisdiction over the case pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d) in that Plaintiffs have filed a putative class action in which: (1) there are 100 or more members in Plaintiffs' proposed class; (2) at least some members of the proposed class have a different citizenship from some defendants; and (3) the claims of the proposed class members exceed the sum or value of \$5,000,000 in the aggregate.

**A. Class Action Consisting of More than 100 Members**

19. Plaintiffs purport to represent a nationwide class of “[a]ll persons and business who, from March 26, 2000 to the present, contracted for merchant card services and/or related equipment with any of the Defendants...” *See* Comp. ¶ 132.

20. Plaintiffs state that the purported class is “composed of more than 100 persons.” *See* Comp. ¶ 134.

21. Accordingly, this case is brought as a putative “class action” within the meaning of 28 U.S.C. § 1332(d)(2).

**B. Diversity of Citizenship**

22. Plaintiffs are entities that operate their principal place of business in the State of California, and are therefore citizens of the State of California for purposes of determining diversity. 28 U.S.C. § 1331(c)(1).

23. Defendant TransFirst Holdings, Inc. (“TFH”) is, and was at the time Plaintiffs commenced this action, a corporation with its principal place of business in Dallas, Texas, and is therefore a citizen of Texas for purposes of determining diversity. 28 U.S.C. § 1331(c)(1).

24. Accordingly, at least one proposed class member and one defendant are diverse, satisfying the requirement of 28 U.S.C. § 1332(d)(2)(A).

**C. The Amount In-Controversy Requirement Is Satisfied**

25. The Complaint does not specify the amount of damages that Plaintiffs seek.

26. Where the Complaint “does not specify the amount of damages sought, the removing defendant must prove by a preponderance of the evidence that the amount in controversy requirement [of CAFA] has been met.” *See Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (internal citations omitted). Under such circumstances, removal is proper where the pleadings and evidence allow a court to reasonably determine that the value of the claims and the rights being litigated exceed the relevant jurisdictional amount. *See Brill v. Countrywide Home Loans*, 427 F.3d 446, 448-49 (7th Cir. 2005); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404-05 (9th Cir. 1996). Moreover, the claims of the individual class members “shall be aggregated to determine

1 whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and  
2 costs.” 28 U.S.C. § 1332(d)(6).

3 27. Although Plaintiffs do not specify the amount of damages they seek on their claims,  
4 Removing Defendants submit that a preponderance of the evidence demonstrates that the aggregate  
5 “matter in controversy” raised by the putative class claims exceeds the “sum or value of \$5,000,000.”  
6 28 U.S.C. § 1332(d)(2), (d)(6).

- 7 a. Plaintiffs purport to represent “[a]ll persons and business who, from March 26, 2000  
8 to the present, contracted for merchant car services and/or related equipment with  
9 any of the Defendants...” *See* Comp. ¶ 132. The size of the proposed class, as  
10 defined in the Complaint, could be tens of thousands of individuals and entities.
- 11 b. Affiliates of Defendant TFH, including but not limited to Defendants TransFirst,  
12 LLC and TransFirst Third Party Sales, LLC, currently do business with more than  
13 100,000 merchant customers, who collectively process an annual transaction  
14 volume run rate of approximately \$20 billion. *See* Declaration of Stephen Cadden  
15 in Support of Defendants’ Notice of Removal of Action, ¶ 2.
- 16 c. Based on the allegations contained in the Complaint and the number of merchants  
17 with whom affiliates of TFH have contracted, an award of as little as \$50 per  
18 merchant would, in and of itself, put the amount in controversy in this action well  
19 over \$5,000,000.
- 20 d. Since March 26, 2000, Defendant Northern Leasing Systems, Inc. (“NLS”) has  
21 entered into no less than 50,000 credit card equipment finance leases. *See*  
22 Declaration of Sara Krieger in Support of Defendants’ Notice of Removal, ¶ 2.
- 23 e. The Complaint alleges that credit card equipment was leased by Plaintiffs for \$4800  
24 while the “same equipment can be purchased new for less than \$500.” Comp. ¶ 65.  
25 Accordingly, an award of \$4300 per NLS equipment lease would put the amount in  
26 controversy for this issue alone well over \$5,000,000.
- 27 f. Plaintiffs allege two claims for racketeering activity under which they seek treble  
28 damages and attorneys’ fees. Comp. ¶¶ 141-172 (alleging RICO claim based on

acts underlying remaining state law claims). Given the breadth of the proposed class, the amount sought by each individual or entity under these claims alone need only be modest for the aggregated amount in controversy to exceed \$5,000,000.

g. Plaintiffs also allege claims for fraud, negligent misrepresentation, false advertising, breach of contract, breach of the duty of good faith and fair dealing, and deceptive trade practices. Given the breadth of the proposed class, the amount sought by each individual or entity under these claims alone need only be modest for the aggregated amount in controversy for these claims to exceed \$5,000,000.

h. Plaintiffs also seek compensatory damages, punitive damages, and attorneys' fees. Each of these claims for damages is properly included in the calculation for the amount in controversy. *See Richmond v. Allstate Ins. Co.*, 897 F.Supp 447 (S.D. Cal. 1995); *Brady v. Mercedes-Benz USA, Inc.*, 243 F.Supp. 2d 1004, 1009 (N.D. Cal. 2002).

i. Plaintiffs declined to stipulate that the amount in controversy in this action is less than \$5,000,000. Tendolkar Dec. ¶ 5.

28. Based on the foregoing, Removing Defendants are informed and believe that the amount in controversy easily exceeds \$5,000,000, satisfying the requirement of 28 U.S.C. § 1332(d)(2), although the Removing Defendants assert that Plaintiffs are not entitled to any relief in this action.

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1 WHEREFORE, Removing Defendants request that the above-titled action now pending against  
2 them in the Superior Court of California, County of San Francisco, be removed therefrom to this  
3 Court.

4  
5 Dated: May 7, 2010

Respectfully submitted,

6 AKIN GUMP STRAUSS HAUER & FELD LLP

7 By Maria Ellinikos  
8 Maria Ellinikos  
9 Attorneys for Defendants TRANSFIRST  
HOLDINGS, INC., TRANSFIRST, LLC and  
TRANSFIRST THIRD PARTY SALES, LLC

10 Dated: May 7, 2010

11 MITCHELL SILBERBERG & KNUPP LLP  
12 11377 West Olympic Blvd.  
Los Angeles, CA 90064  
Telephone: 310 312-3179  
Fax: 310 312-3100

13  
14 By Adam Levin / ME  
15 Adam Levin  
Attorneys for Defendant NORTHERN LEASING  
SYSTEMS, INC.

16 I, Maria Ellinikos, am filing this Notice of Removal and hereby attest that Adam Levin  
17 concurred in this filing.

18 Maria Ellinikos  
19 Maria Ellinikos  
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